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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

14 ERICK J. BLANDINO, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 MCM CONSTRUCTION, INC., and DOES 1
19 to 20,

20 Defendant.

Case No. C 12-1729 WHO

**ORDER GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On March 5, 2014, the Court heard Plaintiff Erick J. Blandino's unopposed motion for final approval of the class action settlement, and for awards of attorney's fees, costs, and incentive payment, as set forth in the Settlement Agreement ("Settlement Agreement"), in the above-captioned action. In accordance with the Court's November 5, 2013, Order Granting Motion for Preliminary Approval of Class Action Settlement and Conditional Certification of Settlement Class ("Preliminary Approval Order"), Class Members have been given notice of the terms of the Settlement Agreement and an opportunity to object to the Settlement Agreement, comment on it, participate in it, and exclude themselves from it. Having considered the Settlement Agreement, the papers submitted by the Parties in support of final approval of the Settlement Agreement, and the argument at the final approval hearing held on March 5, 2014, the Court **ORDERS** as follows:

1. For the purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreement, previously filed with this Court.

2. This Court has jurisdiction over the subject matter of this litigation and over all Parties and Class Members in this litigation.

3. The Court finds that certification of the following two classes for settlement purposes only is appropriate under Rule 23 of the Federal Rules of Civil Procedure:

a. FLSA Collective Class: All persons who were employed as construction laborers in the United States by MCM Construction, Inc. ("MCM" or "Defendant") between March 5, 2009, and November 5, 2013.

b. California Class: All current and former MCM non-exempt trade or craft employees who were employed within California between March 5, 2008, and November 5, 2013.

4. The Court finds that the Settlement Class meets the ascertainability, numerosity, commonality, and typicality requirements to justify certification and that resolution of this matter through a class action is superior to other available methods.

5. The Court finds that Plaintiff Erick J. Blandino ("Plaintiff") is an adequate class

1 representative and appoints him as such.

2 6. The Court finds that Class Counsel, Alan Harris and Priya Mohan, of Harris & Ruble,
3 and David Harris, of the North Bay Law Group, have adequately represented the Settlement Class, and
4 their appointment as Class Counsel is confirmed.

5 7. There are three requests for exclusion, the names of which have been disclosed to
6 Defendant only.

7 **FINAL APPROVAL OF NOTICE PROGRAM**

8 8. Pursuant to the Court's Preliminary Approval Order and based on the Plaintiff's
9 representations, the form of Class Notice was mailed to Class Members by first class mail. The Notice
10 informed Class Members of the terms of the Settlement Agreement, their opportunity to file claims to
11 opt-out of the Settlement Class, to file written objections, and to appear in person or by counsel at the
12 fairness hearing. The Court finds that these procedures afforded protections to Settlement Class
13 Members and provided the basis for the Court to make an informed decision and approve the
14 Settlement Agreement. The Court finds further that the Class Notice provided in this case was the best
15 notice practicable and satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and
16 constitutional due process.

17 **FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

18 9. The Court has reviewed the Settlement Agreement and finds that the Settlement
19 Agreement is fair, adequate, and reasonable when balanced against the possible outcome of further
20 litigation relating to class certification, liability, and damages. The Court finds further that extensive
21 investigation, discovery, and research have been conducted such that counsel for all parties was able to
22 reasonably evaluate their respective positions. The Court also finds that settlement at this time will
23 avoid additional substantial costs such as those that have already been incurred by the Parties and will
24 avoid the delay and risks that would be presented by further prosecution of this lawsuit. The Court
25 finds that the Settlement Agreement has been reached after intensive, serious, and non-collusive arm's-
26 length negotiations.

27 10. The Court finds that no Settlement Class members objected to the Settlement.

28 11. Pursuant to the terms of the Settlement Agreement, in exchange for the Settlement Class

members' agreeing to release the Class Released Claims, Defendant is required to pay \$865,000 under the Settlement Agreement ("Gross Settlement Payment"), which is inclusive of the individual settlement payments to Class Members who submitted valid Claim Forms, Defendant's portion of payroll taxes, the incentive award to the Named Plaintiff, the awards of attorney's fees and costs to Class Counsel, the reasonable expenses of the Claims Administrator and any payments made to the California Labor and Workforce Development Agency ("LWDA"). Taking into account the (1) value of the Settlement Agreement, (2) the risks inherent in continued litigation, (3) the extent of discovery completed and the stage of litigation when Settlement was reached, (4) the complexity, expense, and likely duration of the litigation in the absence of settlement, and (5) the experience and views of counsel, the Court finds that the Settlement Agreement is fair, adequate, reasonable, and deserves this Court's final approval. The Court further finds that the Settlement Agreement was made in good faith, negotiated at arm's length and represents the best interests of the Parties. Accordingly, the Court orders the Parties to consummate the settlement in accordance with the terms of the Settlement Agreement.

DISMISSAL AND RELEASE

12. In accordance with the terms of the Settlement Agreement, this Action shall be dismissed on the merits and with prejudice, with each party bearing its own costs, except as provided in the Settlement Agreement.

13. By this Final Approval Order, in exchange for the consideration provided, Plaintiff and each member of the Settlement Class who did not submit a valid Request for Exclusion will release Defendant and each of Defendant's officers, directors, shareholders, investors, employees, agents, direct and indirect subsidiaries or affiliated corporations, organizations, representatives, insurers, predecessors, successors, assigns, clients (and their respective officers, directors, employees, agents, managers, and fiduciaries), and counsel (collectively referred to as the "Released Parties") from any and all state and federal wage-and-hour claims of every nature or description alleged in the operative Complaint, or that could have been asserted based on the facts alleged in the Complaint up to and including the date of the preliminary approval of this Settlement Agreement. These released claims include but are not limited to (i) the alleged failure to pay minimum wage and overtime in violation of California Labor Code sections 510 and 1194, including alleged off-the-clock claims; (ii) the alleged

1 failure to timely pay wages in violation of California Labor Code section 203; (iii) the alleged failure to
 2 provide accurate pay stubs in violation of California Labor Code section 226; (iv) the alleged failure to
 3 maintain accurate payroll time records in violation California Labor Code section 1174 and Wage
 4 Order No. 16; (v) the alleged failure to provide adequate meal and rest periods in violation of California
 5 Labor Code section 226.7 and 512 and Wage Order No. 16; (vi) the alleged failure to pay minimum
 6 wage and overtime compensation in violation of the Fair Labor Standards Act, 29 U.S.C. § 216(b); (vii)
 7 restitution and injunctive relief for illegal business practices pursuant to California Business &
 8 Professions Code section 17200, et seq.; and (viii) penalties under California's Private Attorneys
 9 General Act ("PAGA"), California Labor Code section 2698, et seq. (Collectively referred to as the
 10 "Class Released Claims"). This release also covers all claims for interest, attorney's fees and costs
 11 related to the Class Released Claims. Class Members who have not returned a claim form by the date
 12 of this Final Approval Order shall not share in the distribution of any part of the Gross Settlement
 13 Payment but nevertheless shall be bound by the release provisions of this Settlement Agreement.
 14 Additionally, all California Class Members who do not return a valid and timely Request for Exclusion
 15 Form and all FLSA Collective Class Members who return a FLSA claim form hereby - for themselves
 16 and for their heirs, representatives, attorneys, executors, administrators, successors, and assigns –
 17 release, acquit, and forever discharge the Released Parties from the Class Released Claims.

18 14. Without affecting the finality of the Final Approval Order, the Court reserves continuing
 19 and exclusive jurisdiction over the Parties and Class Members to administer, supervise, construe, and
 20 enforce the Settlement Agreement and this Final Approval Order in accordance with their terms for the
 21 mutual benefit of the Parties, and to modify the Final Approval Order as necessary.

22 **ALLOCATION OF THE SETTLEMENT**

23 15. Because no objections have been filed to the Settlement Agreement, the Effective Date
 24 of the Settlement Agreement shall be the date of the Final Approval Order.

25 16. Defendant shall fund the Gross Settlement Payment in accordance with the terms set
 26 forth in the Settlement Agreement. All payments to Class Members, Class Counsel, the Claims
 27 Administrator, the Named Plaintiff, and the LWDA shall be made in accordance with the terms and
 28 payment schedule set forth in the Settlement Agreement.

1 17. The Court finds that Class Counsel, Alan Harris and Priya Mohan, of Harris & Ruble,
2 and David Harris, of the North Bay Law Group, having conferred a benefit on Named Plaintiff and the
3 Settlement Class Members and having expended efforts to secure compensation to the Settlement
4 Class, are entitled to a fee. The Court has reviewed the billing and time records submitted by Class
5 Counsel, has cross-checked them using the lodestar method and reasonable billing rates, and finds the
6 fee requested to be reasonable. In accordance with the terms set forth in the Settlement Agreement,
7 Class Counsel shall be paid a fee award of thirty percent of the Gross Settlement Payment, or \$259,500,
8 as well as Class Counsel's out-of-pocket costs and expenses of \$12,842.32.

9 18. In accordance with the terms set forth in the Settlement Agreement, Named Plaintiff
10 Erick J. Blandino shall be paid an Incentive Award of \$5,000 from the Gross Settlement Payment.

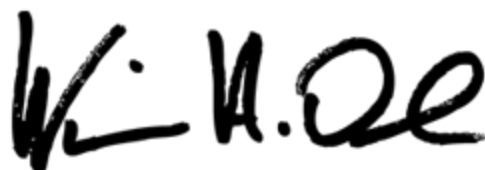
11 19. The Court further approves that Rust Consulting, Inc., will administer the settlement
12 pursuant to the terms set forth in the Settlement Agreement. Rust Consulting, Inc., shall be paid Claims
13 Administration costs of \$25,000 from the Gross Settlement Payment for its services rendered in
14 administering the settlement, in accordance with the terms of the Settlement Agreement.

15 20. Except as stated in this Final Approval Order, all other terms of the Settlement
16 Agreement will remain as stated in the Settlement Agreement and all accompanying documents and the
17 orders of this Court.

18 21. The Court will retain jurisdiction for purposes of enforcing this Settlement Agreement,
19 addressing settlement administration matters, and addressing such matters as may be appropriate under
20 court rules or applicable law.

21 **IT IS SO ORDERED.**

22 Dated: March 6, 2014



HON. WILLIAM H. ORRICK
United States District Judge